

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the SIRS Appeal of
Cornerstone Home Health Care, Inc.

**FINDINGS OF FACT,
CONCLUSIONS
AND RECOMMENDATION**

The above-entitled matter came on for a telephone prehearing conference before Administrative Law Judge Kathleen D. Sheehy at 10:00 a.m. on October 5, 2007. The OAH record closed at the conclusion of the prehearing conference.

Cynthia B. Jahnke, Assistant Attorney General, Suite 900, 445 Minnesota Street, St. Paul, MN 55101-2127, appeared on behalf of the Department of Human Services (Department).

Shelly Johnson, Director, Cornerstone Home Health Care, Inc., 14996 Woodrow Road, Brainerd, MN 56401 (Respondent), did not participate in the conference personally or through counsel.

STATEMENT OF ISSUES

The issue in this case is whether the Department should recover funds from the Respondent for supervisory nursing services that were improperly billed to medical assistance.

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On May 15, 2007, the Department sent by first-class mail a copy of the Notice and Order for Hearing to the Respondent at 14996 Woodrow Road, Brainerd, MN 56401.¹

2. The Notice and Order for Hearing scheduled a telephone prehearing conference in this matter at 1:30 p.m. on June 7, 2007.

¹ Affidavit of Service by U.S. Mail (May 15, 2007).

3. The Notice and Order for Hearing specifically notified the Applicant as follows:

Failure of the parties to appear at the hearing in the above-captioned matter may result in the allegations contained herein to be taken as true. This means that the agency's action will be upheld.²

4. At the Respondent's request, the telephone prehearing conference was rescheduled to take place at 10:00 a.m. on August 16, 2007. By letter dated July 3, 2007, the Administrative Law Judge requested that the Respondent advise her of the telephone number at which the Respondent could be reached for the August 16th conference. The Respondent did not contact the ALJ to provide a telephone number.

5. On August 16, 2007, the ALJ attempted to reach the Respondent at the cell phone number the Department had used to contact the Respondent in the past. The Respondent did not answer the telephone or respond to the message left by the ALJ. After the conference, the ALJ attempted to reach the Respondent at a different telephone number obtained from directory assistance. The person who answered the telephone said the Respondent was ill and unavailable. The ALJ left a message that the Respondent should contact the ALJ as soon as possible to advise whether she planned to participate further in this matter and, if so, when she might be available for a telephone conference. The Respondent did not contact the ALJ.

6. On September 10, 2007, the ALJ wrote to the Respondent notifying the Respondent that another telephone prehearing conference had been scheduled to take place at 10:00 a.m. on October 5, 2007. The Respondent was instructed to call into a conference line in order to participate. The letter advised the Respondent that if the Respondent could not participate at that time, the Respondent must contact the ALJ beforehand to make other arrangements. In addition, the letter advised the Respondent that if she failed to participate in the prehearing conference, she would be deemed to be in default, and the ALJ would recommend that the Commissioner affirm the Department's decision to require a refund for improper billing of nursing services. The Respondent did not contact the ALJ to make other arrangements.³

7. On October 5, 2007, the Respondent failed to call into the telephone prehearing conference.

8. Because the Respondent failed to participate in the telephone prehearing conference, the Respondent is in default.

² Notice and Order for Hearing at 3.

³ Letter from ALJ to Respondent (Sept. 10, 2007).

9. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice and Order for Hearing are taken as true and incorporated by reference into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner are authorized to consider this matter under Minn. Stat. §§ 14.50 and 256B.064, subd. 2(a) (2006), and Minn. R. 9505.0465, subp. 1, and 9505.2215, subp. 1 (2005).

2. The Respondent received due, proper and timely notice of the Department's proposed action and of the time and manner of participating in the prehearing conference. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant procedural legal requirements.

4. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations set out in the Notice and Order for Hearing or other pleadings may be taken as true or deemed proved without further evidence.

5. The Respondent is in default as a result of the Respondent's failure to appear at the prehearing conference.

6. Medical assistance covers personal care assistance services where the services have a statement of need by a physician and are supervised by a mental health professional, a registered nurse (defined as a licensed nurse under Minn. Stat. § 148.171), or a licensed social worker.⁴

7. The Department shall recover medical assistance funds paid to a provider or vendor if the Department determines that the payment was obtained fraudulently or erroneously.⁵

8. The Respondent employed a person to supervise personal care assistance services who was not licensed to practice nursing in Minnesota. The Respondent billed medical assistance for supervisory services provided by this person.⁶

⁴ Minn. Stat. § 256B.0625, subd. 19c (2006); Minn. Stat. § 148.171, subd. 20; Minn. R. 9505.0290, subp. 3 A & 3 B.

⁵ Minn. Stat. § 256B.064, subd. 2(a); Minn. R. 9505.0465, subp. 1; 9505.2215, subp. 1.

⁶ Notice and Order for Hearing at 2.

9. Because the Respondent improperly billed medical assistance for supervisory services by an employee who was not a licensed registered nurse in Minnesota, the Department may recover the \$5,872.07 the Respondent received for those services.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner affirm the Department's determination that it should recover \$5,872.07 from the Respondent for supervisory nursing services that were improperly billed to medical assistance.

Dated: October 10, 2007.

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY

Administrative Law Judge

Reported: Default

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. § 14.61, the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Cal Ludeman, Commissioner, Department of Human Services, 540 Cedar Street, St. Paul, MN 55164, to learn the procedure for filing exceptions or presenting argument. Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.